



LMM 8/1/01 13:32

3:01-CV-01206 BANC OF AMERICA V. APOLLO FISHERIES

19

DECL.

1 JEFFRY A. DAVIS (Bar No. 103299)
EVAN R. SOREM (Bar No. 185588)
2 **GRAY CARY WARE & FREIDENRICH LLP**
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Tel: 619-699-4791
4 Fax: 619-699-2701

01 AUG -1 AM 9:10

J. Mitchell

5 Attorneys for Defendants
Apollo Fisheries Service, Inc., dba Blue
6 Porpoise Marine, Natalie Cintas-Gladnick and
Ronald Gladnick

7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 BANC OF AMERICA SPECIALITY
FINANCE, INC., a North
12 Carolina Corporation,
successor-in-interest and
13 formerly known as
NATIONSCREDIT COMMERCIAL
14 CORPORATION OF AMERICA,

15 Plaintiff,

16 v.

17 APOLLO FISHERIES SERVICE,
INC. dba BLUE PORPOISE
18 MARINE; NATALIE CINTAS-
GLADNICK, an individual, and
19 RONALD GLADNICK, an
individual,

20 Defendants.

CASE NO. 01 CV 1206 BTM (LSP)

DECLARATION OF NATALIE CINTAS-
GLADNICK IN SUPPORT OF OPPOSITION
TO BANC OF AMERICA SPECIALITY
FINANCE, INC.'S APPLICATION FOR
EX PARTE WRIT OF POSSESSION AND
TEMPORARY RESTRAINING ORDER

Date: TBA
Time: TBA
Courtroom: 15
Honorable Barry T. Moskowitz

22 I, Natalie Cintas-Gladnick, declare:

23 1. I am the President of Defendant Apollo Fisheries
24 Service, Inc., dba Blue Porpoise Marine ("Blue Porpoise"), and am
25 authorized to make this declaration on behalf of Blue Porpoise.
26 I have personal knowledge of the following facts and, if called
27 upon to do so, could and would competently testify thereto.
28 ////

1 2. Together with my staff, I have custody and control of
2 certain Blue Porpoise books and records relating to the subject
3 of this action. I am familiar with the manner in which these
4 books and records are made and maintained.

5 3. These books and records were made and maintained in the
6 ordinary course of business by persons who have a business duty
7 to Blue Porpoise to make and maintain such books and records.
8 These books and records were made at or near the time of the
9 occurrence of the event or events which they record. I have
10 reviewed Blue Porpoise's books and records as they relate to the
11 obligations which are the subject of this action. I make this
12 declaration based upon that review and my personal knowledge of
13 the events described herein.

14 4. Blue Porpoise has a financing arrangement with Banc of
15 America Specialty Finance, Inc. ("Specialty Finance").

16 5. Blue Porpoise has no intent to transfer, conceal or
17 remove from the state or substantially impair in value Specialty
18 Finance's Collateral. Rather, Blue Porpoise's sole intention is
19 to liquidate the Collateral, remit the proceeds to Specialty
20 Finance in order to pay off amounts owing to Specialty Finance,
21 and remain an operating business.

22 6. While Blue Porpoise is suffering from some financial
23 difficulty, Blue Porpoise has paid Specialty Finance in excess of
24 \$940,000 from the sale of Specialty Finance's Collateral since
25 January 2000. A true and correct copy of the Blue Porpoise
26 Quickbooks report showing such payments is attached hereto as
27 Exhibit A and incorporated herein by this reference.

28 ////

1 7. Blue Porpoise has not sold any of Specialty Finance's
2 Collateral Out of Trust. Blue Porpoise has consistently
3 indicated to Specialty Finance that the \$98,080 in proceeds from
4 the sale of Specialty Finance's Collateral would be remitted to
5 Specialty Finance at the earliest possible time. Blue Porpoise
6 has every intent of remitting this payment to Specialty Finance
7 provided that Blue Porpoise obtains adequate assurances from
8 Specialty Finance that Specialty Finance will forbear from any
9 further pre-judgment collection activities. Blue Porpoise has
10 segregated these funds and stands prepared to forward the funds
11 to Specialty Finance at once.

12 8. The Ex Parte Application alleges that Blue Porpoise may
13 have utilized funds received from the sale of Specialty Finance's
14 Collateral to pay other debts. This is not the case. Blue
15 Porpoise has not utilized funds received from the sale of
16 Specialty Finance's Collateral to pay any other debts.

17 9. At this time, there remain only six items of Specialty
18 Finance's Collateral in Blue Porpoise's possession. A true and
19 correct copy of an Inventory Checklist of the items of Collateral
20 still held by Blue Porpoise is attached hereto as Exhibit B and
21 is incorporated herein by this reference. The first six items on
22 the Inventory Checklist are the items of Collateral still in Blue
23 Porpoise's possession; the remaining three items were the items
24 sold to generate the \$98,080 in proceeds referenced above. The
25 second and third entries on the Inventory Checklist, those
26 bearing serial numbers NTLAD-675C and 10-1202, are the subject of
27 a pending sale by Blue Porpoise to a third party. Blue Porpoise
28 will ensure that the proceeds from this sale are remitted to

1 Specialty Finance provided that Blue Porpoise receives adequate
 2 assurances from Specialty Finance that Specialty Finance will
 3 forbear from any further pre-judgment collection activities.
 4 Blue Porpoise will segregate the funds received from the sale of
 5 these items and will stand prepared to forward the funds to
 6 Specialty Finance at once.

7 10. Once Specialty Finance receives the \$98,080 in proceeds
 8 and the proceeds from Blue Porpoise's sale of the items
 9 referenced in paragraph 9 above, the amount of Blue Porpoise's
 10 debt to Specialty Finance will be reduced to approximately
 11 \$60,000. This is a very substantial reduction from the \$234,475
 12 owing as of the time Specialty Finance filed the complaint in
 13 this matter.

14 11. As a result of Blue Porpoise's substantial payments to
 15 Specialty Finance over the past eighteen months and Blue
 16 Porpoise's continuing assurances of future payments to Specialty
 17 Finance upon receipt of adequate assurances, Blue Porpoise
 18 requests that the Court deny the Ex Parte Application from the
 19 proceedings in the instant stay this action for ninety days, to
 20 permit Blue Porpoise to sell the remaining Collateral of
 21 Specialty Finance and payoff all amounts owing to Specialty
 22 Finance. In addition, Blue Porpoise requests that the court set
 23 a hearing on this matter to permit the parties an opportunity to
 24 present their positions more fully to the Court.

25 12. If the Court simply grants the Ex Parte Application and
 26 Specialty Finance proceeds with the suit and other pre-judgment
 27 remedies, Blue Porpoise will have no choice but to file
 28 bankruptcy, which will destroy Blue Porpoise's business, cause a

1 loss of jobs and lead to a disastrous result for Specialty
2 Finance and other Blue Porpoise creditors.

3 I declare under penalty of perjury under the laws of the
4 State of California that the foregoing is true and correct and
5 that this declaration was executed on August ___, 2001, at
6 San Diego, California.



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8 Natalie Cintas-Gladnick
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01cv1206

GRAY CARY MARSHALL & PARISER, LLP
801 1459747.1
2103280-1

07/30/01

BPM
Find Report
January through July 2001

Type	Date	Num	Name	debit	Credit
Jan - Jul 01					
Check	1/2/2001	S2012	NATIONS CREDIT		1,802.01
Check	1/2/2001	S2012	NATIONS CREDIT	1,802.01	
Check	1/29/2001	S2135	NATIONS CREDIT		1,272.20
Check	1/29/2001	S2135	NATIONS CREDIT	1,272.20	
Check	2/5/2001	S2161	NATIONS CREDIT		18,652.12
Check	2/5/2001	S2161	NATIONS CREDIT	18,652.12	
Check	2/23/2001	S0059	NATIONS CREDIT		1,254.55
Check	2/23/2001	S0059	NATIONS CREDIT	1,254.55	
Check	3/1/2001	S0082	NATIONS CREDIT		34,677.09
Check	3/1/2001	S0082	NATIONS CREDIT	34,677.09	
Check	3/7/2001	S0113	NATIONS CREDIT		1,130.00
Check	3/7/2001	S0113	NATIONS CREDIT	1,130.00	
Check	4/3/2001	S0254	NATIONS CREDIT		24,348.31
Check	4/3/2001	S0254	NATIONS CREDIT	24,348.31	
Check	4/16/2001	S0353	NATIONS CREDIT		1,309.65
Check	4/16/2001	S0353	NATIONS CREDIT	1,309.65	
Check	4/16/2001	S0366	NATIONS CREDIT		11,807.94
Check	4/16/2001	S0366	NATIONS CREDIT	11,807.94	
Check	5/2/2001	S0442	NATIONS CREDIT		8,202.77
Check	5/2/2001	S0442	NATIONS CREDIT	8,202.77	
Check	5/2/2001	S0443	NATIONS CREDIT		11,909.10
Check	5/2/2001	S0443	NATIONS CREDIT	11,909.10	
Check	5/17/2001	S0564	NATIONS CREDIT		2,578.70
Check	5/17/2001	S0564	NATIONS CREDIT	2,578.70	
Check	5/23/2001	S0629	NATIONS CREDIT		26,759.60
Check	5/23/2001	S0629	NATIONS CREDIT	26,759.60	
Check	6/15/2001	S0717	NATIONS CREDIT		10,105.82
Check	6/15/2001	S0717	NATIONS CREDIT	10,105.82	
Check	6/15/2001	S0718	NATIONS CREDIT		2,826.92
Check	6/15/2001	S0718	NATIONS CREDIT	2,826.92	
Check	7/11/2001	S0854	NATIONS CREDIT		8,552.30
Check	7/11/2001	S0854	NATIONS CREDIT	8,552.30	
Check	7/11/2001	S0855	NATIONS CREDIT		9,317.70
Check	7/11/2001	S0855	NATIONS CREDIT	9,317.70	
Check	7/11/2001	S0856	NATIONS CREDIT		26,833.62
Check	7/11/2001	S0856	NATIONS CREDIT	26,833.62	
Jan - Jul 01				203,741.51	203,741.51

07/30/01

BPM
Find Report
January through December 2000

Type	Date	Num	Name	Debit	Credit
Jan - Dec '00					
Check	1/21/2000	36905	NATIONS CREDIT		11,860.94
Check	1/21/2000	36905	NATIONS CREDIT	11,860.94	
Check	1/21/2000	36906	NATIONS CREDIT		11,799.00
Check	1/21/2000	36906	NATIONS CREDIT	11,799.00	
Check	1/21/2000	36907	NATIONS CREDIT		5,564.92
Check	1/21/2000	36907	NATIONS CREDIT	5,564.92	
Check	1/21/2000	36908	NATIONS CREDIT		9,201.60
Check	1/21/2000	36908	NATIONS CREDIT	9,201.60	
Check	2/24/2000	37213	NATIONS CREDIT		1,982.12
Check	2/24/2000	37213	NATIONS CREDIT	1,982.12	
Check	2/25/2000	37181	NATIONS CREDIT		12,656.15
Check	2/25/2000	37181	NATIONS CREDIT	12,656.15	
Check	3/9/2000	50171	NATIONS CREDIT		9,971.10
Check	3/9/2000	50171	NATIONS CREDIT	9,971.10	
Check	4/13/2000	50236	NATIONS CREDIT		65,850.93
Check	4/13/2000	50236	NATIONS CREDIT	65,850.93	
Check	4/20/2000	50237	NATIONS CREDIT		1,150.54
Check	4/20/2000	50237	NATIONS CREDIT	1,150.54	
Check	4/25/2000	50237	NATIONS CREDIT	65,850.93	
Check	4/27/2000	50256	NATIONS CREDIT		776.96
Check	4/27/2000	50256	NATIONS CREDIT	776.96	
Check	5/1/2000	50256	NATIONS CREDIT		776.96
Check	5/1/2000	50256	NATIONS CREDIT	776.96	
Check	5/11/2000	50281	NATIONS CREDIT		61,882.24
Check	5/11/2000	50281	NATIONS CREDIT	61,882.24	
Check	5/25/2000	50422	NATIONS CREDIT		19,091.32
Check	5/25/2000	50422	NATIONS CREDIT	19,091.32	
Check	5/25/2000	50431	NATIONS CREDIT		349.00
Check	5/25/2000	50431	NATIONS CREDIT	349.00	
Check	6/2/2000	50430	NATIONS CREDIT		1,402.51
Check	6/2/2000	50430	NATIONS CREDIT	1,402.51	
Check	6/5/2000	50553	NATIONS CREDIT		23,504.42
Check	6/5/2000	50553	NATIONS CREDIT	23,504.42	
Check	6/27/2000	50725	NATIONS CREDIT		69,143.37
Check	6/27/2000	50725	NATIONS CREDIT	69,143.37	
Check	7/3/2000	50764	NATIONS CREDIT		1,160.31
Check	7/3/2000	50764	NATIONS CREDIT	1,160.31	
Check	7/20/2000	50831	NATIONS CREDIT		70,820.50
Check	7/20/2000	50831	NATIONS CREDIT	70,820.50	
Check	7/28/2000	50893	NATIONS CREDIT		2,098.77
Check	7/28/2000	50893	NATIONS CREDIT	2,098.77	
Check	8/3/2000	50977	NATIONS CREDIT		12,142.00
Check	8/3/2000	50977	NATIONS CREDIT	12,142.00	
Check	8/18/2000	51109	NATIONS CREDIT		11,909.00
Check	8/18/2000	51109	NATIONS CREDIT	11,909.00	
Check	8/23/2000	51143	NATIONS CREDIT		2,190.50
Check	8/23/2000	51143	NATIONS CREDIT	2,190.50	
Check	8/24/2000	51169	NATIONS CREDIT		1,087.88
Check	8/24/2000	51169	NATIONS CREDIT	1,087.88	
Check	8/25/2000	50909	NATIONS CREDIT		78,942.15
Check	8/25/2000	50909	NATIONS CREDIT	78,942.15	
Check	9/12/2000	51330	NATIONS CREDIT		49,080.99
Check	9/12/2000	51330	NATIONS CREDIT	49,080.99	
Check	9/18/2000	51305	NATIONS CREDIT		79,866.50
Check	9/18/2000	51305	NATIONS CREDIT	79,866.50	
Check	9/28/2000	51461	NATIONS CREDIT		2,863.21
Check	9/28/2000	51461	NATIONS CREDIT	2,863.21	
Check	10/30/2000	51676	NATIONS CREDIT		1,802.01
Check	10/30/2000	51676	NATIONS CREDIT	1,802.01	
Check	11/22/2000	51786	NATIONS CREDIT		29,437.86
Check	11/22/2000	51786	NATIONS CREDIT	29,437.86	
Check		51786	NATIONA PROFIT	99,437.86	

07/30/01

BPM
Find Report
January through December 2000

Type	Date	Num	Name	Debit	Credit
Check	12/1/2000	51818	NATIONS CREDIT		1,489.72
Check	12/1/2000	51818	NATIONS CREDIT	1,489.72	
Check	12/26/2000	51910	NATIONS CREDIT		75,430.95
Check	12/26/2000	51910	NATIONS CREDIT	75,430.95	
Jan - Dec 00				753,137.46	753,137.46

INVENTORY CHECKLIST

R REP: PETERSON, RON
SE LOC: SACRAMENTO

RESULTS PRINTED ON: 07/24/01
LAST INSPECTION: 07/17/01
CLIENT: SPECIAL ASSETS MARINE

PORPOISE MARINE
7 MORENA BLVD
IEGO, CA 92110
76-8882

BRANCH CONTACT
KEN DAIGREPOINT
(800) 876-8544

REMIT TO
BANC OF AMERICA SPECIALTY FINANCE, INC.
P O BOX 198906
ATLANTA GA 30364-8906

DIST-DLR#	DISTRIBUTOR NAME
6178-1010	SPECIAL-ASSET MARINE

#	ITEM	DATE	PLAN	MFG	PRODUCT	MODEL	SERIAL	PR	CR	ST DATE	PRES BAL	AMT DUE	WHY	PRIOR	COLLECT	L
1	11/16/99	2144	GRADY WHITEBOAT	200ADVEN	NTLAD-570N	>				16,907.50	16,907.50	MAT	0.00	0.00	1	
500	11/16/99	2144	YAMAHA ENGINE	200 HP	NTLAD-570N	10-0119	✓	>		11,913.30	11,913.30	MAT	0.00	0.00	1	
1	03/27/00	2131	GRADY WHITEBOAT	200ADVEN	NTLAD-575C	>				19,657.57	0.00		0.00	0.00	1	
500	03/27/00	2131	YAMAHA ENGINE	200 HP	NTLAD-575C	10-1202	✓	>		11,913.35	0.00		0.00	0.00	1	
1	10/20/00	2144	GRADY WHITEBOAT	223TOURN	NTLB-K325	>				18,451.22	0.00		0.00	0.00	1	
500	10/20/00	2144	YAMAHA ENGINE	200 HP	NTLB-K325	10-2730	>			12,418.00	0.00		0.00	0.00	1	
1	11/01/00	2143	GRADY WHITEBOAT	300MARI	NTLE-A341	CP	S			71,708.35	71,708.35	SOLD	0.00	0.00	1	
500	11/01/00	2143	YAMAHA ENGINE	250 HP	1AX10-S865	CP	S			13,449.50	13,449.50	SOLD	0.00	0.00	1	
501	11/01/00	2143	YAMAHA ENGINE	250 HP	1BX10-3159	CP	S			12,922.70	12,922.70	SOLD	0.00	0.00	1	
3ES	O	12/30/00								1,903.60	1,903.60	CHGS	0.00	0.00		
NUMBER OF ITEMS: 8										191,275.64	128,805.55		0.00	0.00		

If there is a Note or Condition Report Attached

LOCATED AT:

LOCATION	ADDRESS	ADDRESS 2	CITY	STATE	ZIP
1	1456 W MORENA BLVD		SAN DIEGO	CA	92110